



**TEXAS INDIGENT DEFENSE  
COMMISSION**

**Fiscal Monitoring Report**

**Reagan County, Texas**

**FY 2015 Indigent Defense Expenses**

**Final Report**

**February 10, 2017**

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## **EXECUTIVE SUMMARY**

Reagan County's fiscal monitoring desk review began on February 1, 2016. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2014 to September 30, 2015 (FY2015) was reviewed as part of the fiscal monitoring desk review process.

### **Summary of Findings**

- Some payments to attorneys do not appear to be made in accordance with the published fee schedule as required by Article 26.05 of Texas Code of Criminal Procedures.
- The FY 2015 Indigent Defense Expense Report (IDER) submitted in accordance with Texas Government Code Section 79.036(e) was not supported by financial data provided.
- Civil case expenditures were included on the IDER.
- Attorney Fee Voucher did not contain the itemization that is needed to comply with Article 26.05(c) of the Texas Code of Criminal Procedure.
- Attorney continuing legal education (CLE) hours are not maintained to verify attorney qualifications.

### **Objective**

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

### **Scope**

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2015. Records provided by the Reagan County Auditor's Office were reviewed.

### **Methodology**

To accomplish the objectives, the fiscal monitor talked with the county auditor, the county judge, and the district judge administrator. The fiscal monitor reviewed:

- 100 % of paid attorney fees;
- General ledger transactions provided by the Reagan County Auditor's Office;
- IDER and attorney fee schedule;
- Public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- Reagan County's local indigent defense plan.

# **DETAILED REPORT**

## **BACKGROUND INFORMATION**

### **County Background**

Reagan County is located on the Edwards Plateau in West Texas. The County occupies an area of 1,176 square miles of which .7 miles is water. The Spraberry Trend, the third largest oil field in the United States by remaining reserves underlies most of the county. Reagan County serves an estimated population of 3,773. The County was created in 1903 when citizens voted to split from Tom Green County. The county was named for John Henninger Reagan, who served as postmaster general of the Confederate States of America, a US senator, a US Representative and the first chairman of the Railroad Commission of Texas. Reagan County is a political subdivision of the State of Texas. Neighboring counties are Glasscock, Sterling, Tom Green, Irion, Crockett, Upton and Midland Counties.

### **Commission Background**

In January 2002, the 77<sup>th</sup> Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82<sup>nd</sup> Texas Legislature reorganized the Task Force as the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant,” as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

### **Formula Grant**

The County submitted the FY 2015 indigent defense on-line grant application to assist in the provision of indigent defense services. Reagan County met the formula grant eligibility requirements and was awarded \$8,074.00 for FY 2015.

### **Discretionary Grant**

Reagan County did not apply for a discretionary grant for FY 2015; therefore no discretionary grant funds were reviewed.

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding One

Eight attorney fee vouchers out of the thirty-three (33) vouchers reviewed did not appear to be made in accordance with the published fee schedule as required by Code of Criminal Procedure (CCP) Article 26.05(b). The published fee schedule does not indicate a flat rate of pay for any case other than juvenile cases. One felony voucher was paid a flat rate of \$400.00. Three felony cases were paid a rate of \$75.00 an hour instead of \$80.00 contained in the fee schedule. One of those amounts were actually an amount between \$75.00 and \$80.00 as the calculation of hours did not support either rate. The attorneys for each of these submitted vouchers requested the amount that was paid. In regards to misdemeanor cases, the published fee schedule appears to follow the district court schedule which pays attorneys \$80.00 per hour. No flat fee amount is listed. Also no consideration for multiple cases per defendant is listed. There were two vouchers that listed two cases each, one was paid a flat rate of \$750.00 and the other was paid a flat rate of \$1,000.00. A third voucher listed one case that was paid a flat rate of \$600.00 and a fourth voucher that listed one case paid a flat rate of \$1,000.00.

An additional seven vouchers appear to be based on a standard misdemeanor flat fee rate of \$500 per case but that amount is not reflected in the published fee schedule. These seven vouchers could also be considered in violation of CCP Article 26.05(b).

### Recommendation:

The payment amounts requested, approved and authorized for the vouchers in question are not supported by the published fee schedule. The County should review the processes in place and determine if additional procedures should be developed to verify reasons for variances when attorney's request payment amount that are not in compliance with the fee schedules.

The judges should review the fee schedules and take formal action, if necessary, to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(b).

### County Response

#### Reagan County Action Plan

*Reagan County will adopt a new fee schedule that outlines our current procedures.*

**Contact person(s):** *Rebecca Lumbreras, Court Coordinator*

**Completion date:** *1/31/17*

## **Finding Two**

Under Section 79.036(e) of the Texas Government Code, the county auditor (or other person designated by the commissioners' court) must annually prepare and send indigent defense data to the Commission. This data is to include the total expenses for cases in which an attorney was appointed for an indigent defendant or indigent juvenile in each district court, county court, statutory county court, and appellate court on criminal or juvenile delinquency matters. Since FY2014, the financial data reports expanded to include attorney-level information. Section 79.036(a-1) of the Texas Government Code states "(a-1) Not later than November 1 of each year and in the form and manner prescribed by the commission, each county shall prepare and provide to the commission information that describes for the preceding fiscal year the number of appointments under Article 26.04, Code of Criminal Procedure, and Title 3, Family Code, made to each attorney accepting appointments in the county, and information provided to the county by those attorneys under Article 26.04(j) (4), Code of Criminal Procedure."

Reagan County prepared and submitted the FY 2015 Indigent Defense Expense Report (IDER) in accordance with Texas Government Code Section 79.036(e). However errors were noted in the presentation of data. The numbering convention for district court cases and county court cases indicate that one county court case was included with the district court cases and one district court case was included with the county court cases. Also one juvenile case was not listed on the IDER and by reviewing the voucher it appears that it should have been listed in the county court.

Since it did not appear that more than one attorney worked on the same case, the case count should have but did not match between the court report and the attorney report for the district court.

A voucher for the cost of an investigation was not included in the IDER.

### **Recommendation:**

The County staff should gain an understanding of the court processes for Reagan County to further assist in the IDER preparation. Case numbering conventions used by the courts may be used to assist the auditor in identifying the proper court.

Because the amounts reported on the IDER are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Reagan County was less than would have been awarded if the attorney fee for the juvenile case and the investigative fee had been included in the IDER. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

### **County Response**

### **Reagan County Action Plan**

*The County staff has implemented a review process to insure that payments are run through the proper court. Case numbers, names and other identifiers are used to describe payments and then are double-checked for accuracy. This information will be reconciled prior to the preparation of the IDER so that it will be reported accurately.*

**Contact person(s):** *Terrie G. Schneemann, Reagan County Auditor*

**Completion date:** *January 31, 2017*

### **Finding Three**

The FY2015 IDER submitted by Reagan County under Texas Government Code Section 79.036(e) included the cost of attorney fees on one civil cases with the criminal indigent defense attorney fees paid. Expenses associated with civil cases are ineligible and may not be included in the IDER.

Reagan County has overstated the county's criminal indigent defense expenditures due to the inclusion of civil case costs. Because Reagan County did not include all the expense eligible from finding two the net effect of over reporting the attorney fees due to inclusion of the civil case is underreporting the total expenses by \$224.00. The amounts reported on the IDER are part of the basis for Formula Grant awards, the FY 2015 Formula Grant for Reagan County was less than would have been awarded if all expenses were reported properly. Please refer to the Indigent Defense Expenditure Report Procedure Manual found at the following website, <http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

### **Recommendation:**

The appropriate county personnel should be trained to identify the difference between civil cases and criminal cases.

### **County Response**

#### **Reagan County Action Plan**

*The County staff has been trained and will work with the County Clerk's Office to identify the difference between civil and criminal cases. Identifying information is printed on the check and General Ledger. The Report Procedure Manual will be reviewed prior to the preparation on the IDER and ineligible expenses will be excluded from the report.*

**Contact person(s):** *Terrie G. Schneemann, Reagan County Auditor*

**Completion date:** *January 31, 2017*

### **Finding Four**

The Code of Criminal Procedure (CCP) Article 26.05(c) reads in part... and “if the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount.” One voucher of the thirty-three (33) reviewed had an amount that the judge changed to what appeared to be the correct hourly rate, however no written explanation was provided.

### **Recommendation:**

To ensure compliance with CCP Article 26.05(c) the County should develop a process to confirm the judge has approved all vouchers and has included an explanation for any variance to the attorney’s requested amount.

### **County Response**

#### **Reagan County Action Plan**

*Reagan County will develop a process to confirm all vouchers are approved and that they include necessary explanation of variances to the attorney’s requested amount.*

**Contact person(s): *Rebecca Lumbreras, Court Coordinator***

**Completion date: *1/31/17***

## **Finding Five**

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorneys who were assigned criminal cases had met the CLE requirements to be eligible for appointment. The county may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available)

### **Recommendation:**

The county must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

### **County Response:**

### **Reagan County Action Plan**

*January 1<sup>st</sup> of each year the District Judge Court Coordinator will send a notice to each attorney of the appointment list requesting a statement of proof of current year’s CLE requirements.*

**Contact person(s): *Rebecca Lumbreras, Court Coordinator***

**Completion date: *1/31/17***

# **APPENDIXES**

## APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

<b>ANDREWS COUNTY INDIGENT DEFENSE EXPENDITURES</b>			
<b>Expenditures</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Population Estimate	16,402	16,729	
Juvenile Assigned Counsel	\$44,902.94	\$12,650.00	\$42,050.00
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$59,890.76	\$52,969.80	\$53,463.50
Adult Misdemeanor Assigned Counsel	\$28,000.00	\$34,375.00	\$25,865.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$10,800.00	\$1,825.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$8,379.08	\$6,715.00	\$6,102.98
Total Court Expenditures	\$151,972.78	\$108,534.80	\$127,481.48
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$33,484.00	\$0.00	\$33,484.00
Total Court and Administrative Expenditures	\$185,456.78	\$108,534.80	\$160,965.48
Formula Grant Disbursement	\$18,499.00	\$32,251.00	\$16,002.00
Equalization Disbursement	\$0.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$89,951.40	\$113,013.68	\$86,473.54
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	260	293	267

### Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

<b>Reagan County</b>				
<b>Year</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Texas 2015</b>
Population (Non-Census years are estimates)	3,654	3,672	3,773	27,213,214
Felony Charges Added (from OCA report)	26	26	51	271,744
Felony Cases Paid	6	13	17	193,560
% Felony Charges Defended with Appointed Counsel	23%	50%	33%	71%
Felony Trial Court-Attorney Fees	\$7,196	\$10,542	\$17,401	\$110,036,405
Total Felony Court Expenditures	\$7,196	\$10,542	\$17,401	\$126,091,674
Misdemeanor Charges Added (from OCA report)	281	245	244	503,299
Misdemeanor Cases Paid	17	29	16	222,408
% Misdemeanor Charges Defended with Appointed Counsel	6%	12%	7%	44%
Misdemeanor Trial Court Attorney Fees	\$6,856	\$15,209	\$9,130	\$39,141,724
Total Misdemeanor Court Expenditures	\$6,856	\$15,209	\$9,130	\$40,061,131
Juvenile Charges Added (from OCA report)	7	0	0	31,813
Juvenile Cases Paid	0	1	0	41,068
Juvenile Attorney Fees	\$0	\$500	\$0	\$11,072,434
Total Juvenile Expenditures	\$0	\$500	\$0	\$11,747,908
Total Attorney Fees	\$14,052	\$26,251	\$26,531	\$165,942,108
Total ID Expenditures	\$15,052	\$28,736	\$26,531	\$238,029,838
Increase In Total Expenditures over Baseline	-26%	41%	30%	168%
Total ID Expenditures per Population	\$4.12	\$7.83	\$7.03	\$8.75
Commission Formula Grant Disbursement	\$7,355	\$9,092	\$8,074	\$23,931,689
Cost Recouped from Defendants	\$8,158	\$3,222	\$1,535	\$11,530,419

**Indigent Defense Expenditure Reporting**

Source: Texas Indigent Defense Commission records

## **APPENDIX B – CRITERIA**

### **Criteria**

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2015 Indigent Defense Expenditure Report Manual found at:  
<http://www.tidc.texas.gov/media/40464/fy15-ider-manual.pdf>

## **APPENDIX C – DISTRIBUTION LIST**

The Honorable Larry Isom  
Constitutional County Judge  
Reagan County  
P.O. Box 100  
Big Lake, Texas 76932

The Honorable Pedro Gomez, Jr  
112th District Court Judge  
P.O. Drawer C  
Ozona, TX 76943

Ms. Terrie G. Schneemann  
County Auditor  
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